

ISAAC LILLEY.

[To accompany Bill H. R. No. 809.]

JUNE 4, 1860.

Mr. HALE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the memorial and papers of Isaac Lilley, report:

That the petitioner was the owner of the brig Planter, built in 1826, and registered at Bath, in the State of Maine, and was estimated by competent appraisers to be worth, when new, forty-eight hundred dollars, and for the loss of which compensation is asked. The facts respecting the loss of the brig to Mr. Lilley are not disputed, and are fully sustained by the evidence submitted to the committee, and appear to be fairly stated in a report made by the Committee of Claims at the 2d session of the 25th Congress, which statement of facts your committee will substantially adopt, which is as follows:

“In October, 1827, the brig was placed under the command of Captain Isaac Swanton, and sailed to New Orleans, thence to Charleston, and back to New Orleans, and thence to New York, where, in pursuance of orders from the owner, then residing in Maine, Captain Swanton sought employment for the brig in the freighting business, and let her under a charter party, dated May 15, 1828, to Sylvester Judson, for a voyage to Florida and back to New York. The brig having been freighted by Judson with a cargo of corn, pork, &c., sailed for Florida, where she arrived, and Captain Swanton delivered her cargo to one Sherman, the agent of Judson. Sherman furnished a return cargo of live-oak timber, which was taken on board the brig, and thereupon, in July, 1828, the brig, with her tackle, apparel, and furniture, was seized and libelled, and, after due proceedings had, was condemned and sold as forfeited by the law, for taking and having on board live-oak timber, cut on the lands of the United States, with intent to transport the same to some port in the United States, contrary to the 3d section of the act of Congress of March 1, 1817, entitled ‘An act making reservations of certain public lands to supply timber for naval purposes.’

“The petitioner states that neither he nor his agent, Captain Swanton, had any knowledge that the live-oak timber put on board the brig by Sherman was unlawfully obtained, and that he has been deprived,

by the forfeiture of the brig, of nearly all his property, without any fault or intentional violation of law on his part; that since the seizure and condemnation of the brig he has in vain sought to obtain compensation for his loss from Judson, who placed his property beyond the reach of the petitioner immediately after a demand for satisfaction was made upon him; that Captain Swanton was taken sick soon after the seizure, and left Florida, without appointing an agent or attorney to defend the brig at the trial, which was had at Tallahassee in October, 1828.

"In a supplementary petition, presented at this session, an additional fact is stated: that the land on which the live-oak timber was cut was not the property of the United States, as was finally determined in the Supreme Court of the United States in 1835, in the case of *Mitchel et al. vs. The United States*, 9 Peters's Reports, 711.

"The petitioner claims the value of his vessel, as appraised when new, being forty-eight hundred dollars, with interest, two hundred dollars for expenses incurred in seeking compensation for his loss, and twelve hundred dollars for three months' hire of his brig under the charter party, which he lost in consequence of her seizure and condemnation.

"Captain Swanton testifies that he had no knowledge that the live-oak timber which he took on board the brig was cut on the land of the United States; but on the contrary, he was then informed by Sherman that it was cut on land of one George Hamlin.

"The petitioner states, on oath, that he had no knowledge of the nature of the cargo which the brig was to take out or bring home for Judson, and that he had no intention of violating any law.

"The petitioner, residing in Maine, took no part personally in making or executing the contract or charter party, which was done through the agency of Captain Swanton; and he did not know Judson till March, 1829, when he went to New York and commenced a suit against Judson to recover the value of the brig, but for the reason before stated did not succeed in obtaining any satisfaction.

"The committee are convinced, from the circumstances of the case and the testimony of Captain Swanton, that the forfeiture was incurred 'without wilful negligence or any intention of fraud' on the part of the owner or commander of the brig while she was pursuing, as they believed, a lawful business; and that, if there was any intention of violating the law in the transaction, it was confined to Judson and his agent, Sherman.

"The act of Congress of March 1, 1817, entitled 'An act making reservations of certain public lands for naval purposes,' under which the brig was forfeited, provides that all forfeitures incurred under that act may be mitigated or remitted in the manner prescribed by 'An act to provide for mitigating or remitting the forfeitures and disabilities accruing in certain cases therein mentioned,' approved March 3, 1797. This last act authorizes the judge of the district, when any forfeiture shall have accrued, on a petition for a remission, to inquire summarily into the facts, and to certify them to the Secretary of the Treasury, who is thereupon empowered to remit so much of the forfeiture as has accrued to the United States, 'if, in his opinion, the same shall have

been incurred without wilful negligence or any intention of fraud in the person or persons incurring the same.'

"The committee are of opinion that if the facts in this case had been certified in the manner required by the last-mentioned act, to the Secretary of the Treasury, he would have remitted that part of the proceeds of the forfeited vessel which accrued to the United States, as within the purview of that act, and in accordance with the just spirit of the government, which has frequently interposed to shield the innocent from the penalties of a transgression of positive enactments of law. * * * * *

"The committee, believing that the forfeiture of the petitioner's brig was incurred without any illegal or fraudulent intent on his part, cannot hesitate to recommend a remission of that part of the proceeds of the brig which inured to the United States, as required by that equitable regard to the rights of an innocent citizen which should always influence the action of the government, and by a proper respect for the action of Congress in other similar cases.

"The brig was sold by order of the court for the middle district of Florida, December 12, 1828, for seventeen hundred dollars, and, after deducting all costs and charges, the residue of the proceeds of the sale, amounting to nine hundred and seventy dollars and twenty-nine cents, was paid over to the collector of Apalachicola district, in Florida, (within which the forfeiture was incurred,) one moiety thereof to the use of certain revenue officers, and the other moiety to be paid into the Treasury of the United States, in pursuance of the nineteenth and ninety-first sections of the act of March 2, 1799, entitled 'An act to regulate duties on imports and tonnage.'

"The petitioner, however, claims to be fully indemnified for the loss of his brig by the forfeiture, and for all other losses and expenses consequent upon and immediately resulting from that forfeiture, on the ground that the land from which the live-oak timber was cut was not, in fact, the property of the United States, but was private property, the title to which was, at the time the timber was cut, completely vested in certain individuals, and did not require any act of confirmation on the part of the United States, having been effectually confirmed, to all intents and purposes, by the treaty by which Florida was ceded to the United States. This would seem to be the effect of the decisions of the Supreme Court of the United States.—(The United States *vs.* Arredondo et al., 6 Peters's Reports, 691; and *Mitchel et al. vs. The United States*, 9 Peters's Reports, 711.) In this last case, commenced October, 1828, and finally determined in 1835, the title to about 1,200,000 acres of land, including Forbes & Co.'s purchase, on which the said live-oak timber was cut, was adjudged to be in certain persons, under a title derived from certain Indian grants, and confirmed by the competent authorities of the Spanish government prior to the treaty of cession. * * * * *

"The record of the proceedings in the court in Florida, in relation to the trial and condemnation of the brig, is among the papers exhibited to the committee; from which it appears that defence was made at the trial by Sherman, in behalf of all concerned, on the ground that the live-oak timber taken on board the brig was cut on

land known as Forbes & Co.'s purchase, which was not, in fact, the land of the United States, but was private property. But the court did not consider this as a legal and sufficient defence, because the title to this land had not been confirmed to those claiming or holding under Forbes & Co., by any act of the United States; and, in the opinion of that court, until such act of confirmation, the title or possession of the land (at least for the purpose of protecting and preserving it from spoliations, &c., for the rightful owner) vested in the United States by virtue of the treaty with Spain and of the laws in relation to lands ceded by treaties. An appeal was claimed from the decree of the court, but was never, in fact, taken and prosecuted." * * * *

The committee recommended a return to Mr. Lilley of the one-half the proceeds of the brig, being the amount paid to the United States, after deducting costs of sale, &c., amounting to \$485, and reported a bill for that purpose, which passed Congress at the same session. The petitioner claims that this was not a sufficient compensation for the loss of his brig, worth nearly five thousand dollars, taken by the officers of the government, condemned and sacrificed in Florida while he was residing in the State of Maine, without any fault or neglect on his part, and, as it turned out, upon a false and unfounded claim on the part of the government—the timber not having been cut on government lands at all, but on those of a private company.

Your committee concur in this view of the case, and think the claim for compensation for the brig on the part of Mr. Lilley is just and reasonable.

It would seem to your committee that the act of Congress under which the marshal of the United States seized this ship, and under which the courts in Florida condemned it, was one that can hardly be defended upon principles of justice and a due regard to the private rights of individuals which have already been, or at least always ought to be, regarded by Congress, and no act is entitled to much respect which disregards or ignores them.

An act of Congress which allows the private property of a person to be seized and confiscated without any fault, neglect, or crime on his part, or of those for whose conduct he may be fairly held responsible, and that without any notice to him, is, to say the least of it, if not unconstitutional, very unreasonable, harsh, and unjust.

The law under which this brig was seized is of that character, as it is not pretended that Mr. Lilley was guilty of any fault or neglect, nor was any fault or neglect charged to any one for whose conduct he was in any respect accountable. To seize a man's property and confiscate it under these circumstances, would seem to be sufficiently unjust in any case; but when it turns out, as it does in this, that the allegation on which the seizure was founded—viz: that the timber was cut upon the lands of the government—was wholly unfounded, and that the government did not own the lands, and had no title to them, the hardship of the case and the gross injustice done to Mr. Lilley are, if possible, increased.

It may be said that the decision of the court in Florida condemning the brig is conclusive upon Mr. Lilley, and that he should have appealed from the decision. It does not appear from the records that

Mr. Lilley had any actual notice of the proceedings in Florida. He resided in Maine, and the communication between Maine and Florida was then difficult and expensive. The brig was attached on the 17th July, and the decree of sale was made in October following.

But even if he had notice, the committee think he should not be concluded by the decree, when it appeared afterwards, in a suit tried in the Supreme Court of the United States, that the government did not own the land. This question was not tried and determined at the time the brig was seized and sold, and it could not, therefore, have availed Mr. Lilley in that proceeding. It was a suit involving the title to more than a million of acres of land, which was pending many years in the United States courts, and, no doubt, tried at great expense, and after long delays, which it would have been simply impossible for Mr. Lilley to have had tried in the suit for this brig. Believing, therefore, as the committee do, that Mr. Lilley lost his property without any fault of his, through the action of the United States officers under a claim wholly unfounded on the part of the government, as it subsequently appeared, your committee think he is justly entitled to redress.

They therefore report a bill granting him \$4,000, which, after deducting what he has received, would seem to be about the value of the brig at the time of its seizure, and recommend its passage.

